

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 221

SENATE BILL 1243

AN ACT

AMENDING SECTIONS 49-151 AND 49-152, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-152.01 AND 49-152.02; AMENDING SECTIONS 49-158, 49-159 AND 49-701.02, ARIZONA REVISED STATUTES; RELATING TO REMEDIATION STANDARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-151, Arizona Revised Statutes, is amended to read:

49-151. Definitions

In this article, unless the context otherwise requires:

1. "Engineering control" means a remediation method such as a barrier or cap that is used to prevent or minimize exposure to contaminants and THAT includes technologies that reduce the mobility or migration of contaminants.

2. "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to contaminants.

3. "Nonresidential use" means those uses of property other than residential uses.

4. "OWNER" MEANS ALL PERSONS OR ENTITIES THAT CURRENTLY HOLD FEE TITLE TO PROPERTY OTHER THAN AS SECURITY FOR AN OBLIGATION. ON TRANSFER OF FEE TITLE OF AN AFFECTED PROPERTY AND AFTER NOTICE IS PROVIDED PURSUANT TO SECTION 49-152.01, SUBSECTION C, THE SUCCESSOR OWNER IS THE OWNER FOR PURPOSES OF THIS ARTICLE AND ASSUMES ALL OF THE OBLIGATIONS OF AN OWNER PURSUANT TO THIS ARTICLE AND THE PERSON WHO TRANSFERRED TITLE IS NO LONGER RESPONSIBLE FOR THOSE OBLIGATIONS EXCEPT AS PRESCRIBED IN SECTION 49-152.01, SUBSECTION C.

~~4.~~ 5. "Remediation" means either:

(a) The treatment or removal of contaminated ~~soils~~ ENVIRONMENTAL MEDIA to meet predetermined risk levels or site specific risk levels.

(b) ~~Soils~~ ENVIRONMENTAL MEDIA that meet predetermined risk levels or site specific risk levels as determined by a risk assessment.

~~5.~~ 6. "Residential use" means those uses of remediated property where natural persons are reasonably expected to be in frequent, repeated contact with soil.

Sec. 2. Section 49-152, Arizona Revised Statutes, is amended to read:

49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

1 (b) The guidance levels in subdivision (a) OF THIS PARAGRAPH modified
2 to reflect the United States environmental protection agency published
3 assumptions for exposures that are not residential as the standards for
4 nonresidential uses. The initial adoption of these interim standards shall
5 be effective by December 15, 1995 and shall be deemed emergency rules
6 pursuant to section 41-1026.

7 2. Issue guidance on methods for calculating case-by-case, site
8 specific risk based remediation levels in accordance with risk assessment
9 methodologies that are accepted in the scientific community and shall not
10 preclude the use of newly developed risk assessment methodologies that are
11 accepted in the scientific community.

12 ~~B. If, to comply with subsection A of this section, the owner of~~
13 ~~property has elected to remediate the property to nonresidential uses or has~~
14 ~~elected to use an institutional control or engineering control, the owner~~

15 B. THE OWNER OF A PROPERTY MAY ELECT TO REMEDIATE THE PROPERTY TO MEET
16 A SITE SPECIFIC RESIDENTIAL OR NONRESIDENTIAL RISK BASED REMEDIATION STANDARD
17 OR A PREDETERMINED RESIDENTIAL OR NONRESIDENTIAL RISK BASED REMEDIATION
18 STANDARD. THE PROPERTY IS SUITABLE FOR UNRESTRICTED USE IF IT HAS BEEN
19 REMEDIATED WITHOUT THE USE OF ENGINEERING OR INSTITUTIONAL CONTROLS TO MEET
20 EITHER OF THE FOLLOWING:

21 1. THE RESIDENTIAL PREDETERMINED RISK BASED REMEDIATION STANDARD.

22 2. A SITE SPECIFIC RISK BASED HAZARD INDEX EQUAL TO OR LESS THAN ONE
23 OR A RISK OF CARCINOGENIC HEALTH EFFECTS THAT IS LESS THAN OR EQUAL TO THE
24 RANGE OF RISK LEVELS SET FORTH IN 40 CODE OF FEDERAL REGULATIONS SECTION
25 300.430(e)(2)(i)(A)(2), BASED ON RESIDENTIAL EXPOSURE.

26 C. IF THE OWNER HAS ELECTED TO USE AN ENGINEERING OR INSTITUTIONAL
27 CONTROL TO MEET THE STANDARDS PRESCRIBED IN SUBSECTION B OF THIS SECTION, OR
28 IF THE OWNER HAS ELECTED TO LEAVE CONTAMINATION ON THE PROPERTY THAT EXCEEDS
29 THE APPLICABLE RESIDENTIAL STANDARD FOR THE PROPERTY, THE OWNER shall record
30 in each county where the property is located AN INSTITUTIONAL CONTROL THAT
31 CONSISTS OF a restrictive covenant that is labeled "declaration of
32 environmental use restriction" pertaining to the area of the property
33 necessary to protect the public health and the environment. A PERSON WHO IS
34 CONDUCTING A REMEDIAL ACTION, REMEDIATION, CORRECTIVE ACTION OR RESPONSE
35 ACTION THAT REQUIRES AN INSTITUTIONAL OR ENGINEERING CONTROL AND WHO IS NOT
36 THE OWNER OF THE PROPERTY SHALL OBTAIN WRITTEN CONSENT FROM THE OWNER BEFORE
37 IMPLEMENTING THE INSTITUTIONAL CONTROL OR CONSTRUCTING THE ENGINEERING
38 CONTROL. ON IMPLEMENTATION OF THE INSTITUTIONAL OR ENGINEERING CONTROL, THE
39 OWNER SHALL RECORD A DECLARATION OF ENVIRONMENTAL USE RESTRICTION IN EACH
40 COUNTY WHERE THE PROPERTY IS LOCATED. IF THE INSTITUTIONAL CONTROL OR
41 ENGINEERING CONTROL WILL AFFECT RIGHT-OF-WAY THAT IS OWNED, MAINTAINED OR
42 CONTROLLED BY A PUBLIC ENTITY FOR PUBLIC BENEFIT, THE PERSON SHALL ALSO
43 OBTAIN THE PUBLIC ENTITY'S WRITTEN CONSENT BEFORE IMPLEMENTING THE
44 INSTITUTIONAL CONTROL OR CONSTRUCTING THE ENGINEERING CONTROL. The

1 declaration of environmental use restriction shall limit by legal
2 description:

3 1. The area of the property where the institutional control or
4 engineering control shall be maintained.

5 2. The area of the property to be restricted to nonresidential use,
6 if BECAUSE contamination remains on the property ABOVE THE STANDARDS
7 PRESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION. ~~at or above~~
8 ~~either of the following:~~

9 ~~(a) Predetermined risk based remediation standards for other than~~
10 ~~residential exposure assumptions.~~

11 ~~(b) Concentrations resulting in a hazard index greater than one,~~
12 ~~indicating that there may exist an appreciable risk to human health from~~
13 ~~noncancer health effects, or a risk of carcinogenic health effects greater~~
14 ~~than the range of risk levels set forth in 40 Code of Federal Regulations~~
15 ~~section 300.430(e)(2)(i)(A)(2).~~

16 ~~C.~~ D. At the written request of the owner of property that is subject
17 to a declaration of environmental use restriction, the director shall
18 determine whether release OR MODIFICATION of the declaration of environmental
19 use restriction is appropriate. IF A RELEASE HAS BEEN REQUESTED, the
20 director shall make this determination within sixty days after the date of
21 the property owner's request. If the director determines that release of the
22 declaration of environmental use restriction is appropriate, the director
23 shall record in each county where the property is located a notice releasing
24 the declaration of environmental use restriction. THE DECLARATION OF
25 ENVIRONMENTAL USE RESTRICTION IS PERPETUAL UNLESS RELEASED PURSUANT TO THIS
26 SECTION. The director shall determine that release of a declaration of
27 environmental use restriction is appropriate if the property has been
28 remediated, without the use of institutional controls or engineering
29 controls, to either:

30 1. Meet predetermined risk based remedial standards for residential
31 exposure assumptions.

32 2. Present a risk based hazard index equal to or less than one from
33 noncancer health effects and a risk estimate of carcinogenic health effects
34 equal to or less than the range of risk levels set forth in 40 Code of
35 Federal Regulations section 300.430(e)(2)(i)(A)(2).

36 ~~D.~~ E. The department shall establish a repository in the department
37 listing sites remediated under programs administered by the department under
38 this title. The repository shall include the name and address of the owner
39 of the property, when the remediation was conducted, the legal description
40 and street address of the property, the applicability of section 33-434.01,
41 THE TYPE OF FINANCIAL ASSURANCE MECHANISM THAT IS BEING USED, IF APPLICABLE,
42 and a description of the purpose of the declaration of environmental use
43 restriction.

44 ~~E.~~ F. When recorded, an owner's declaration of environmental use
45 restriction under subsection B of this section is a covenant that runs with

1 and burdens the property, BINDS THE OWNER AND THE OWNER'S HEIRS, SUCCESSORS
2 AND ASSIGNS AND inures to the benefit of the department and the state and is
3 sufficient if it contains all of the following information: IF NOTICE OF
4 THE DECLARATION OF ENVIRONMENTAL USE RESTRICTION THAT INCLUDES A SPECIFIC
5 DESCRIPTION OF THE AREA OF THE PROPERTY THAT IS SUBJECT TO THE DECLARATION
6 OF ENVIRONMENTAL USE RESTRICTION IS CONTAINED IN THE REPOSITORY MAINTAINED
7 BY THE DEPARTMENT PURSUANT TO SUBSECTION E OF THIS SECTION, A DECLARATION OF
8 ENVIRONMENTAL USE RESTRICTION MAY NOT BE EXTINGUISHED, LIMITED OR IMPAIRED
9 THROUGH ANY OF THE FOLLOWING:

- 10 1. ISSUANCE OF A TAX DEED.
- 11 2. FORECLOSURE OF A TAX LIEN.
- 12 3. FORECLOSURE OF ANY MORTGAGE, DEED OF TRUST OR OTHER ENCUMBRANCE OR
13 LIEN ON THE PROPERTY.
- 14 4. ADVERSE POSSESSION.
- 15 5. EXERCISE OF EMINENT DOMAIN.
- 16 6. APPLICATION OF THE DOCTRINE OF ABANDONMENT, THE DOCTRINE OF WAIVER
17 OR ANY OTHER COMMON LAW DOCTRINE.

18 G. EACH PARTY TO A DECLARATION OF ENVIRONMENTAL USE RESTRICTION SHALL
19 INCORPORATE THE TERMS OF THE DECLARATION OF ENVIRONMENTAL USE RESTRICTION
20 INTO ANY LEASE, LICENSE OR OTHER AGREEMENT THAT IS SIGNED BY THE PARTY AND
21 THAT GRANTS A RIGHT WITH RESPECT TO THE PROPERTY THAT IS SUBJECT TO THE
22 DECLARATION OF ENVIRONMENTAL USE RESTRICTION. THE INCORPORATION MAY BE IN
23 FULL OR BY REFERENCE.

24 H. A DECLARATION OF ENVIRONMENTAL USE RESTRICTION IS SUFFICIENT IF IT
25 CONTAINS ALL OF THE FOLLOWING INFORMATION:

- 26 1. A legal description and the address of the area of the property
27 that is subject to the declaration.
- 28 2. The date that remediation was completed and a map of the area of
29 the property that is subject to the declaration.
- 30 3. A description of the environmental contaminants that were
31 remediated THE SUBJECT OF THE REMEDIATION, REMEDIAL ACTION, CORRECTIVE ACTION
32 OR RESPONSE ACTION.
- 33 4. A statement that more detailed information is available at the
34 department, including the address at which that information will be
35 maintained.
- 36 5. A notarized signature of a department official indicating approval
37 of the declaration of environmental use restriction.
- 38 6. The notarized signature of the owner of the property.

39 F. I. If institutional controls are used by the owner IN ADDITION TO
40 A DECLARATION OF ENVIRONMENTAL USE RESTRICTION to satisfy the requirements
41 of this section, the declaration of environmental use restriction, in
42 addition to the information required by subsection E- H of this section,
43 shall include all of the following:

- 44 1. A statement documenting any requirements for maintenance of the
45 institutional control, including a description of the institutional control

1 and the reason it must remain in place to protect public health and the
2 environment.

3 2. A statement indicating that if any person desires to cancel or
4 modify the institutional control in the future, the person must obtain prior
5 written approval from the department pursuant to this section.

6 3. A statement acknowledging the department's right of access to the
7 property at all reasonable times to verify that institutional controls are
8 being maintained.

9 ~~6.~~ J. If engineering controls are used by ~~the owner~~ to satisfy the
10 requirements of this section, the declaration of environmental use
11 restriction, in addition to the information required by subsection ~~E~~ H of
12 this section, shall include all of the following:

13 1. A statement of all requirements for maintenance of the engineering
14 control including a description of the control, the date it was constructed
15 and the reason it must remain in place to protect public health and the
16 environment.

17 2. A statement that if any person desires to change the engineering
18 controls in the future that person shall obtain prior written approval from
19 the department.

20 3. A statement acknowledging the department's right of access to the
21 property at all reasonable times to verify that engineering controls are
22 being maintained.

23 4. A BRIEF DESCRIPTION OF THE ENGINEERING CONTROL PLAN AND FINANCIAL
24 ASSURANCE MECHANISM PRESCRIBED BY SECTION 49-152.01, IF APPLICABLE.

25 ~~H.~~ K. When the declaration of environmental use restriction is
26 recorded OR MODIFIED, an owner electing to use institutional or engineering
27 controls to satisfy the requirements of this section shall pay the department
28 a fee established by rule. If the control is an institutional control, the
29 owner shall submit to the department a written report once each calendar year
30 regarding the status of the institutional control. If the control is an
31 engineering control, the owner shall maintain the engineering control on the
32 property to ensure that it continues to protect public health and the
33 environment and shall inspect each engineering control at least once each
34 calendar year. Within thirty days after each inspection, the owner shall
35 submit to the department a written report that:

36 1. Describes the condition of the engineering control.

37 2. States the nature and cost of all repairs RESTORATION made to the
38 engineering control during the calendar year.

39 3. Includes current photographs of the engineering control.

40 4. DESCRIBES THE STATUS OF THE FINANCIAL ASSURANCE MECHANISM
41 PRESCRIBED BY SECTION 49-152.01, IF APPLICABLE, AND A CERTIFICATION THAT THE
42 FINANCIAL ASSURANCE MECHANISM IS BEING MAINTAINED.

43 ~~1. The department may enter on the property at all reasonable times~~
44 ~~to assess the condition of each engineering control. If the department~~
45 ~~determines that repair or restoration of the engineering control is necessary~~

1 ~~to ensure the protection of public health or the environment, the department~~
2 ~~shall give notice to the owner. If the owner fails to initiate repair or~~
3 ~~restoration of the engineering control within sixty days of the notice or~~
4 ~~fails to complete the required repair or restoration within a reasonable time~~
5 ~~set by the department, the department may seek injunctive relief to compel~~
6 ~~the owner to repair or restore the engineering control or enter the property~~
7 ~~and repair or restore the engineering control at the department's expense.~~
8 ~~The director may recover from the owner all reasonable costs incurred in~~
9 ~~connection with the repair or restoration of the engineering control.~~

10 ~~J. L. The department shall provide a copy of the declaration of~~
11 ~~environmental use restriction to the local jurisdiction with zoning and~~
12 ~~development plan approval for the property. The receipt of this copy does~~
13 ~~not create any new obligation or confer additional powers on the local~~
14 ~~jurisdiction. A DECLARATION OF ENVIRONMENTAL USE RESTRICTION DOES NOT~~
15 ~~AUTHORIZE A USE OF PROPERTY THAT IS OTHERWISE PROHIBITED BY ZONING ORDINANCES~~
16 ~~OR OTHER ORDINANCES OR LAWS. A DECLARATION OF ENVIRONMENTAL USE RESTRICTION~~
17 ~~MAY INCLUDE ACTIVITY LIMITATIONS AND USE RESTRICTIONS THAT WOULD OTHERWISE~~
18 ~~BE PERMITTED BY ZONING ORDINANCES OR OTHER ORDINANCES OR LAWS.~~

19 ~~K. M. The department shall adopt rules as necessary to implement this~~
20 ~~section. These rules may be combined with any rules necessary to implement~~
21 ~~section 49-158.~~

22 ~~L. N. THE DEPARTMENT MAY ENTER ON THE PROPERTY AT ALL REASONABLE~~
23 ~~TIMES TO ASSESS THE CONDITION OF EACH ENGINEERING CONTROL. When the~~
24 ~~department enters on property pursuant to this section to verify that~~
25 ~~engineering controls are being maintained TO ASSESS THE CONDITION OF AN~~
26 ~~ENGINEERING CONTROL, the department shall:~~

27 1. Provide twenty-four hours' advance notice of the entry to the
28 property owner, if practicable.

29 2. Allow the owner or an authorized representative of the owner to
30 accompany the department representative.

31 3. Present photographic identification on entry of the property.

32 4. Provide the owner or an authorized representative of the owner with
33 notice of the right to have a duplicate sample or split of any sample taken
34 during the inspection if the duplicate or split of any sample would not
35 prohibit an analysis from being conducted or render an analysis inconclusive.

36 O. NOTHING IN THIS SECTION SHALL PRECLUDE THE DEPARTMENT FROM
37 INITIATING AN ACTION UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW.

38 Sec. 3. Title 49, chapter 1, article 4, Arizona Revised Statutes, is
39 amended by adding sections 49-152.01 and 49-152.02, to read:

40 49-152.01. Engineering controls; financial assurance

41 A. IF AN ENGINEERING CONTROL IS USED TO SATISFY THE REQUIREMENTS OF
42 SECTION 49-152, THE OWNER SHALL SUBMIT TO THE DEPARTMENT AN ENGINEERING
43 CONTROL PLAN THAT CONTAINS ALL OF THE FOLLOWING:

44 1. A DETAILED DESCRIPTION OF THE ENGINEERING CONTROL THAT IS PREPARED
45 BY A PROFESSIONAL ENGINEER WHO IS LICENSED IN THIS STATE. THE DESCRIPTION

1 SHALL INCLUDE A MAINTENANCE PLAN FOR THE CONTROL AND SHALL DESCRIBE HOW THE
2 ENGINEERING CONTROL WILL PREVENT OR MINIMIZE EXPOSURE TO CONTAMINANTS, THE
3 CONTROL'S SPECIFICATIONS AND ITS EXPECTED OPERATIONAL LIFE.

4 2. A CONTINGENCY PLAN FOR THE ENGINEERING CONTROL IN THE EVENT THAT
5 THE ENGINEERING CONTROL FAILS AND MUST BE RESTORED OR DOES NOT ACHIEVE THE
6 INTENDED LEVEL OF PROTECTION OR MITIGATION.

7 3. A DETAILED COST ANALYSIS OF THE ENGINEERING CONTROL IN CURRENT
8 DOLLARS. THE COST ANALYSIS SHALL INCLUDE THE COST OF CONSTRUCTION AND
9 MAINTENANCE AND THE COST OF IMPLEMENTING THE CONTINGENCY PLAN.

10 4. A STATEMENT FROM THE CHIEF FINANCIAL OFFICER OR A PERSON IN A
11 SIMILAR POSITION OF LEGAL RESPONSIBILITY ON BEHALF OF THE OWNER THAT
12 INDICATES THAT THE OWNER IS FINANCIALLY CAPABLE OF MEETING THE REQUIREMENTS
13 OF THIS SECTION.

14 B. THE OWNER SHALL SUBMIT A PROPOSED FORM OF FINANCIAL ASSURANCE
15 DOCUMENT THAT IS BASED ON THE COST ANALYSIS PRESCRIBED BY SUBSECTION A,
16 PARAGRAPH 3 OF THIS SECTION AND THAT DESCRIBES HOW THE OWNER WILL ENSURE THAT
17 THE ENGINEERING CONTROL WILL BE MAINTAINED AND THAT THERE WILL BE SUFFICIENT
18 FUNDS AVAILABLE TO RESTORE THE ENGINEERING CONTROL IF IT FAILS OR IF IT FAILS
19 TO MEET ITS PERFORMANCE EXPECTATIONS. THE OWNER SHALL PAY THE DEPARTMENT A
20 FEE ESTABLISHED BY RULE WITH EACH REQUEST FOR APPROVAL, AMENDMENT OR
21 SUBSTITUTION OF A FINANCIAL ASSURANCE MECHANISM. THE FINANCIAL ASSURANCE
22 SHALL INCLUDE ALL OF THE FOLLOWING:

23 1. ANY ONE OR MORE OF THE FOLLOWING IN A FORM AND AMOUNT THAT IS
24 SATISFACTORY TO THE DIRECTOR:

25 (a) PAYMENT INTO THE INSTITUTIONAL AND ENGINEERING CONTROL FUND
26 ESTABLISHED BY SECTION 49-159, IN ADDITION TO PAYMENT OF THE FEE PRESCRIBED
27 BY SECTION 49-152, SUBSECTION K.

28 (b) A MAINTENANCE AND RESTORATION TRUST FUND.

29 (c) LETTER OF CREDIT.

30 (d) SURETY BOND GUARANTEEING PERFORMANCE OF MAINTENANCE AND
31 RESTORATION.

32 (e) INSURANCE POLICY.

33 (f) FINANCIAL TEST AND CORPORATE GUARANTEE.

34 (g) A GOVERNMENT FINANCIAL TEST FOR STATE AND FEDERAL AGENCIES,
35 CITIES, TOWNS, COUNTIES AND OTHER GOVERNMENT ENTITIES AND POLITICAL
36 SUBDIVISIONS.

37 (h) A GOVERNMENT GUARANTEE TEST FOR STATE AND FEDERAL AGENCIES,
38 CITIES, TOWNS, COUNTIES AND OTHER GOVERNMENT ENTITIES AND POLITICAL
39 SUBDIVISIONS.

40 (i) ANY OTHER FINANCIAL ASSURANCE MECHANISMS OR COMBINATION OF
41 MECHANISMS AS APPROVED BY THE DIRECTOR.

42 2. IF A GOVERNMENT ENTITY USES A GOVERNMENT FINANCIAL TEST OR A
43 GOVERNMENT GUARANTEE TEST TO MEET THE REQUIREMENTS OF THIS SECTION, A
44 SUBSEQUENT OWNER SHALL DEMONSTRATE FINANCIAL ASSURANCE PURSUANT TO THIS

1 SECTION WITHIN THIRTY DAYS OF THE SALE OR TRANSFER OF THE PROPERTY FOR WHICH
2 A FINANCIAL ASSURANCE MECHANISM IS REQUIRED.

3 3. THE AMOUNT OF THE FINANCIAL ASSURANCE SHALL BE SUFFICIENT TO COVER
4 BOTH OF THE FOLLOWING:

5 (a) THE COST OF MAINTENANCE OF THE ENGINEERING CONTROL FOR A PERIOD
6 OF THIRTY YEARS OR UNTIL THE OWNER DEMONSTRATES THAT CONTINUED MAINTENANCE
7 OF THE ENGINEERING CONTROL IS NO LONGER NECESSARY, WHICHEVER OCCURS FIRST.

8 (b) THE COST OF RESTORING THE ENGINEERING CONTROL IF IT FAILS.

9 4. THE FINANCIAL ASSURANCE MECHANISM SHALL BE STRUCTURED SO THAT THE
10 DEPARTMENT HAS PROMPT ACCESS TO THE FUNDS NECESSARY TO MAINTAIN OR RESTORE
11 THE ENGINEERING CONTROL AS PRESCRIBED BY SECTION 49-152.02, IF THE OWNER
12 FAILS TO DO SO.

13 5. THE AMOUNT OF THE FINANCIAL ASSURANCE SHALL BE ADJUSTED TO ACCOUNT
14 FOR INFLATION.

15 6. ON APPROVAL BY THE DEPARTMENT, AN OWNER MAY AMEND A FINANCIAL
16 ASSURANCE MECHANISM OR MAY SUBSTITUTE A FINANCIAL ASSURANCE MECHANISM WITH
17 ANOTHER.

18 C. AT LEAST FIVE DAYS BEFORE THE SALE OR TRANSFER OF A PROPERTY THAT
19 IS SUBJECT TO A DECLARATION OF ENVIRONMENTAL USE RESTRICTION BECAUSE OF AN
20 ENGINEERING CONTROL:

21 1. THE OWNER OF THE PROPERTY SHALL PROVIDE WRITTEN NOTICE OF THE SALE
22 OR TRANSFER TO THE DEPARTMENT. THE NOTICE SHALL IDENTIFY THE BUYER OR
23 TRANSFEREE.

24 2. THE BUYER OR TRANSFEREE SHALL PROVIDE TO THE DEPARTMENT A WRITTEN
25 COMMITMENT TO COMPLY WITH THE REQUIREMENTS OF THE ENGINEERING CONTROL PLAN
26 AND TO MAINTAIN OR REPLACE THE FINANCIAL ASSURANCE MECHANISM. THE FINANCIAL
27 ASSURANCE OBLIGATIONS OF THE SELLER ARE NOT RELIEVED UNTIL THE BUYER OR
28 TRANSFEREE DEMONSTRATES FINANCIAL ASSURANCE TO THE SATISFACTION OF THE
29 DEPARTMENT.

30 49-152.02. Enforcement of engineering controls; civil penalty

31 A. IF THE DIRECTOR DETERMINES THAT AN ENGINEERING CONTROL HAS NOT BEEN
32 MAINTAINED IN ACCORDANCE WITH THE MAINTENANCE PLAN REQUIRED BY SECTION
33 49-152.01, OR THAT AN ENGINEERING CONTROL HAS FAILED AND THE OWNER HAS FAILED
34 TO ADEQUATELY IMPLEMENT THE CONTINGENCY PLAN REQUIRED BY SECTION 49-152.01,
35 THE DIRECTOR SHALL GIVE NOTICE OF THE FAILURE TO MAINTAIN OR FAILURE TO
36 IMPLEMENT THE CONTINGENCY PLAN TO THE OWNER BY CERTIFIED MAIL. IF THE OWNER
37 FAILS TO ADEQUATELY IMPLEMENT THE CONTINGENCY PLAN, INITIATE SATISFACTORY
38 MAINTENANCE OR COMPLETE THE REQUIRED MAINTENANCE WITHIN A REASONABLE TIME AS
39 SPECIFIED IN THE NOTICE, THE DIRECTOR MAY ISSUE AN ORDER THAT REQUIRES THE
40 IMPLEMENTATION OF THE CONTINGENCY PLAN OR THE MAINTENANCE OR RESTORATION OF
41 THE CONTROL WITHIN A REASONABLE TIME PERIOD.

42 B. IF THE DEPARTMENT DETERMINES THAT A PERSON HAS FAILED TO OBTAIN OR
43 MAINTAIN A FINANCIAL ASSURANCE MECHANISM APPROVED BY THE DEPARTMENT UNDER
44 SECTION 49-152.01, THE DEPARTMENT MAY ISSUE AN ORDER REQUIRING THAT THE

1 FINANCIAL ASSURANCE MECHANISM BE OBTAINED OR RESTORED WITHIN A REASONABLE
2 AMOUNT OF TIME.

3 C. AN ORDER THAT IS ISSUED UNDER THIS SECTION SHALL STATE WITH
4 REASONABLE SPECIFICITY THE NATURE OF THE DEFICIENCY, A GENERAL DESCRIPTION
5 OF THE ACTIONS TO BE TAKEN TO REMEDY THE DEFICIENCY, A TIME FOR REMEDYING THE
6 DEFICIENCY AND THE RIGHT TO A HEARING.

7 D. AN ORDER THAT IS ISSUED PURSUANT TO THIS SECTION BECOMES FINAL AND
8 ENFORCEABLE IN SUPERIOR COURT UNLESS WITHIN THIRTY DAYS AFTER THE RECEIPT OF
9 THE ORDER THE RECIPIENT REQUESTS A HEARING PURSUANT TO TITLE 41, CHAPTER 6,
10 ARTICLE 10. IF A HEARING IS REQUESTED, THE ORDER DOES NOT BECOME FINAL UNTIL
11 THE DEPARTMENT HAS ISSUED A FINAL DECISION ON THE APPEAL.

12 E. IF THE DIRECTOR DETERMINES THAT AN OWNER HAS FAILED TO COMPLY WITH
13 A FINAL ORDER ISSUED PURSUANT TO THIS SECTION AND AS A RESULT HAS CREATED A
14 CONDITION THAT REPRESENTS AN ACTUAL OR POTENTIAL ENDANGERMENT TO PUBLIC
15 HEALTH OR THE ENVIRONMENT, THE DIRECTOR MAY ENTER THE PROPERTY AND MAINTAIN
16 OR RESTORE THE ENGINEERING CONTROL. THE DEPARTMENT SHALL BE ENTITLED TO
17 RECOVER ALL REASONABLE AND NECESSARY COSTS OF SUCH MAINTENANCE OR RESTORATION
18 TO THE EXTENT THAT THE MAINTENANCE OR RESTORATION IS WITHIN THE SCOPE OF THE
19 REMEDIAL ACTIONS SPECIFIED IN THE ORDER. IN SEEKING COST RECOVERY, THE
20 DEPARTMENT SHALL ACCESS THE FINANCIAL ASSURANCE MECHANISM PURSUANT TO SECTION
21 49-152.01, SUBSECTION B. TO THE EXTENT THAT FUNDS IN THE FINANCIAL ASSURANCE
22 MECHANISM ARE INSUFFICIENT TO COVER THE RECOVERABLE COSTS OF MAINTENANCE OR
23 RESTORATION, THE DEPARTMENT MAY SEEK TO RECOVER THE UNPAID AMOUNT FROM THE
24 OWNER, THE INSTITUTIONAL AND ENGINEERING CONTROL FUND ESTABLISHED BY SECTION
25 49-159, OR ANY OTHER SOURCE OF FUNDS AUTHORIZED BY LAW FOR THAT PURPOSE.

26 F. IF THE DIRECTOR DETERMINES THAT AN OWNER'S FAILURE TO MAINTAIN OR
27 RESTORE AN ENGINEERING CONTROL HAS CREATED AN IMMINENT AND SUBSTANTIAL
28 ENDANGERMENT TO THE PUBLIC HEALTH OR THE ENVIRONMENT, THE DIRECTOR MAY
29 REQUEST THAT THE ATTORNEY GENERAL COMMENCE A CIVIL ACTION. AN ACTION THAT
30 IS FILED PURSUANT TO THIS SUBSECTION SHALL HAVE PRECEDENCE OVER ALL OTHER
31 MATTERS PENDING BEFORE THE COURT. THE ACTION MAY SEEK TO DO ANY OR ALL OF
32 THE FOLLOWING:

33 1. REQUEST A TEMPORARY RESTRAINING ORDER, A PRELIMINARY INJUNCTION OR
34 A PERMANENT INJUNCTION TO MITIGATE OR PREVENT THE ENDANGERMENT.

35 2. ACCESS THE FINANCIAL ASSURANCE MECHANISM PURSUANT TO SECTION
36 49-152.01, SUBSECTION B TO MITIGATE OR PREVENT THE ENDANGERMENT. AN ACTION
37 THAT IS FILED PURSUANT TO THIS SUBSECTION SHALL HAVE PRECEDENCE OVER ALL
38 OTHER MATTERS PENDING BEFORE THE COURT.

39 G. AN OWNER WHO FAILS TO COMPLY WITH A FINAL ORDER ISSUED PURSUANT TO
40 SUBSECTION A OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY UP TO ONE THOUSAND
41 DOLLARS PER DAY FOR EACH DAY OF NONCOMPLIANCE. THE TOTAL CIVIL PENALTIES
42 THAT MAY BE IMPOSED ON AN OWNER PURSUANT TO THIS SUBSECTION SHALL NOT EXCEED
43 TWO HUNDRED FIFTY THOUSAND DOLLARS FOR EACH FINAL ORDER THAT IS
44 VIOLATED. THE ATTORNEY GENERAL AT THE REQUEST OF THE DIRECTOR SHALL FILE AN
45 ACTION IN SUPERIOR COURT TO RECOVER PENALTIES PROVIDED IN THIS SECTION. IN

1 DETERMINING THE AMOUNT OF A CIVIL PENALTY, THE COURT SHALL CONSIDER THE
2 FOLLOWING FACTORS:

3 1. THE LEVEL OF ACTUAL OR POTENTIAL THREAT TO PUBLIC HEALTH OR THE
4 ENVIRONMENT POSED BY THE OWNER'S FAILURE TO COMPLY WITH THE ORDER.

5 2. WHETHER THE REASON FOR THE OWNER'S FAILURE TO COMPLY WITH THE
6 ORDER, IF KNOWN, WAS BEYOND THE REASONABLE CONTROL OF THE OWNER.

7 3. WHETHER THE OWNER MADE ANY GOOD FAITH ATTEMPT TO COMPLY WITH THE
8 ORDER.

9 4. THE FINANCIAL STATUS OF THE OWNER.

10 5. THE ECONOMIC BENEFIT, IF ANY, THAT RESULTS FROM THE VIOLATION.

11 6. OTHER MATTERS AS JUSTICE MAY REQUIRE.

12 Sec. 4. Section 49-158, Arizona Revised Statutes, is amended to read:

13 49-158. Restrictions on property use; enforcement of
14 engineering and institutional controls

15 A. Notwithstanding any other provisions of this title, if a remedial
16 action, remediation or corrective action performed pursuant to this title or
17 a response action performed pursuant to CERCLA as defined in section 49-201
18 includes an institutional control or an engineering control and the remedial
19 action, remediation, corrective action or response action is not subject to
20 section 49-152, the owner of the property on which the institutional control
21 or engineering control is located shall ~~record in each county where the~~
22 ~~property is located a restrictive covenant that is labeled "declaration of~~
23 ~~environmental use restriction". The declaration of environmental use~~
24 ~~restriction shall limit by legal description the area of the property~~
25 ~~necessary to protect public health and the environment where the~~
26 ~~institutional control or engineering control shall be maintained, ON~~
27 ~~IMPLEMENTATION OF THE INSTITUTIONAL CONTROL OR ON CONSTRUCTION OF THE~~
28 ~~ENGINEERING CONTROL, SHALL RECORD IN EACH COUNTY WHERE THE PROPERTY IS~~
29 ~~LOCATED A RESTRICTIVE COVENANT THAT IS LABELED "DECLARATION OF ENVIRONMENTAL~~
30 ~~USE RESTRICTION". A PERSON WHO IS CONDUCTING A REMEDIAL ACTION, REMEDIATION,~~
31 ~~CORRECTIVE ACTION OR RESPONSE ACTION THAT REQUIRES AN INSTITUTIONAL OR~~
32 ~~ENGINEERING CONTROL AND WHO IS NOT THE OWNER OF THE PROPERTY SHALL OBTAIN~~
33 ~~WRITTEN CONSENT FROM THE OWNER BEFORE IMPLEMENTING THE INSTITUTIONAL CONTROL~~
34 ~~OR CONSTRUCTING THE ENGINEERING CONTROL. ON IMPLEMENTATION OF THE~~
35 ~~INSTITUTIONAL CONTROL OR CONSTRUCTION OF THE ENGINEERING CONTROL, THE OWNER~~
36 ~~SHALL RECORD A DECLARATION OF ENVIRONMENTAL USE RESTRICTION IN EACH COUNTY~~
37 ~~WHERE THE PROPERTY IS LOCATED. IF THE INSTITUTIONAL CONTROL OR ENGINEERING~~
38 ~~CONTROL WILL AFFECT RIGHT-OF-WAY THAT IS OWNED, MAINTAINED OR CONTROLLED BY~~
39 ~~A PUBLIC ENTITY FOR PUBLIC BENEFIT, THE PERSON SHALL ALSO OBTAIN THE PUBLIC~~
40 ~~ENTITY'S WRITTEN CONSENT BEFORE IMPLEMENTING THE INSTITUTIONAL CONTROL OR~~
41 ~~CONSTRUCTING THE ENGINEERING CONTROL. THE DECLARATION OF ENVIRONMENTAL USE~~
42 ~~RESTRICTION SHALL LIMIT BY LEGAL DESCRIPTION THE AREA OF THE PROPERTY WHERE~~
43 ~~THE INSTITUTIONAL CONTROL OR ENGINEERING CONTROL SHALL BE MAINTAINED.~~

44 B. When recorded, an owner's declaration of environmental use
45 restriction under subsection A of this section is a covenant that runs with

1 and burdens the property, BINDS THE OWNER AND THE OWNER'S HEIRS, SUCCESSORS
2 AND ASSIGNS AND inures to the benefit of the department and the state ~~and is~~
3 ~~sufficient if it contains all of the following information:~~. IF NOTICE OF
4 THE DECLARATION OF ENVIRONMENTAL USE RESTRICTION THAT INCLUDES A SPECIFIC
5 DESCRIPTION OF THE AREA OF THE PROPERTY THAT IS SUBJECT TO THE DECLARATION
6 OF ENVIRONMENTAL USE RESTRICTION IS CONTAINED IN THE REPOSITORY MAINTAINED
7 BY THE DEPARTMENT PURSUANT TO SECTION 49-152, SUBSECTION E, A DECLARATION OF
8 ENVIRONMENTAL USE RESTRICTION MAY NOT BE EXTINGUISHED, LIMITED OR IMPAIRED
9 THROUGH ANY OF THE FOLLOWING:

- 10 1. ISSUANCE OF A TAX DEED.
- 11 2. FORECLOSURE OF A TAX LIEN.
- 12 3. FORECLOSURE OF ANY MORTGAGE, DEED OF TRUST OR OTHER ENCUMBRANCE OR
13 LIEN ON THE PROPERTY.
- 14 4. ADVERSE POSSESSION.
- 15 5. EXERCISE OF EMINENT DOMAIN.
- 16 6. APPLICATION OF THE DOCTRINE OF ABANDONMENT, THE DOCTRINE OF WAIVER
17 OR ANY OTHER COMMON LAW DOCTRINE.

18 C. EACH PARTY TO A DECLARATION OF ENVIRONMENTAL USE RESTRICTION SHALL
19 INCORPORATE THE TERMS OF THE DECLARATION OF ENVIRONMENTAL USE RESTRICTION
20 INTO ANY LEASE, LICENSE OR OTHER AGREEMENT THAT IS SIGNED BY THE PARTY AND
21 THAT GRANTS A RIGHT WITH RESPECT TO THE PROPERTY THAT IS SUBJECT TO THE
22 DECLARATION OF ENVIRONMENTAL USE RESTRICTION. THE INCORPORATION MAY BE IN
23 FULL OR BY REFERENCE.

24 D. A DECLARATION OF ENVIRONMENTAL USE RESTRICTION IS SUFFICIENT IF IT
25 CONTAINS ALL OF THE FOLLOWING INFORMATION:

- 26 1. A legal description and the address of the area of the property
27 that is subject to the declaration.
- 28 2. The date that remediation, remedial action, corrective action or
29 response action was completed and a map of the area of the property that is
30 subject to the declaration.
- 31 3. A description of the environmental contaminants that were the
32 subject of the remediation, remedial action, corrective action or response
33 action.
- 34 4. A statement that more detailed information is available at the
35 department including the address at which that information will be
36 maintained.
- 37 5. A notarized signature of a department official indicating approval
38 of the declaration of environmental use restriction.
- 39 6. The notarized signature of the owner or owners of the property.

40 ~~C.~~ E. If institutional controls are used IN ADDITION TO THE
41 DECLARATION OF ENVIRONMENTAL USE RESTRICTION, the declaration of
42 environmental use restriction, in addition to the information required by
43 subsection ~~B~~ D of this section, shall include the same elements required
44 pursuant to section 49-152, subsection ~~F~~ I.

1 ~~D.~~ F. If engineering controls are used, the declaration of
2 environmental use restriction, in addition to the information required by
3 subsection ~~B~~ D of this section, shall include the same elements required
4 pursuant to section 49-152, ~~subsection G~~ SUBSECTIONS F THROUGH J AND SECTION
5 49-152.01.

6 ~~E.~~ G. When a declaration of environmental use restriction is recorded
7 OR MODIFIED, an owner shall pay to the department a fee established by
8 rule. The owner shall follow the same requirements for institutional
9 controls and engineering controls pursuant to section 49-152, subsection ~~H~~
10 K AND SECTION 49-152.01.

11 ~~F.~~ The department may enter on the property at all reasonable times
12 to assess the condition of each engineering control. The same requirements
13 apply to the department and the owner as stated in section 49-152, subsection
14 ~~F~~.

15 H. THE DEPARTMENT SHALL PROVIDE A COPY OF THE DECLARATION OF
16 ENVIRONMENTAL USE RESTRICTION TO THE LOCAL JURISDICTION WITH ZONING AND
17 DEVELOPMENT PLAN APPROVAL FOR THE PROPERTY. A DECLARATION OF ENVIRONMENTAL
18 USE RESTRICTION DOES NOT AUTHORIZE A USE OF PROPERTY THAT IS OTHERWISE
19 PROHIBITED BY ZONING ORDINANCES OR OTHER ORDINANCES OR LAWS. A DECLARATION
20 OF ENVIRONMENTAL USE RESTRICTION MAY INCLUDE ACTIVITY LIMITATIONS AND USE
21 RESTRICTIONS THAT WOULD OTHERWISE BE PERMITTED BY ZONING ORDINANCES OR OTHER
22 ORDINANCES OR LAWS. THE RECEIPT OF THIS COPY DOES NOT CREATE ANY NEW
23 OBLIGATION OR CONFER ADDITIONAL POWERS ON THE LOCAL JURISDICTION.

24 I. THE DEPARTMENT MAY ENTER THE PROPERTY PURSUANT TO SECTION 49-152.
25 THE DEPARTMENT MAY ALSO ENFORCE THIS SECTION AS PRESCRIBED BY SECTION
26 49-152.02.

27 ~~G.~~ J. The department shall adopt rules as necessary to implement this
28 section.

29 ~~H.~~ K. When the department enters on property pursuant to this section
30 to verify that engineering controls are being maintained, the department
31 shall meet the same requirements pursuant to section 49-152, subsection ~~I~~ N.

32 ~~I.~~ L. At the written request of the owner of property that is subject
33 to a declaration of environmental use restriction recorded pursuant to
34 subsection A of this section, the director shall determine whether release
35 OR MODIFICATION of the declaration of environmental use restriction is
36 appropriate. IF A RELEASE HAS BEEN REQUESTED, the director shall make this
37 determination within sixty days after the date of the property owner's
38 request. If the director determines that release of a declaration of
39 environmental use restriction is appropriate, the director shall record in
40 each county where the property is located a notice releasing the declaration
41 of environmental use restriction. Release by the director under this section
42 SUBSECTION is appropriate if maintenance of the institutional control or
43 engineering control is no longer necessary to protect public health and the
44 environment.

1 M. NOTHING IN THIS SECTION SHALL PRECLUDE THE DEPARTMENT FROM
2 INITIATING AN ACTION UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW.

3 Sec. 5. Section 49-159, Arizona Revised Statutes, is amended to read:

4 49-159. Institutional and engineering control fund; purpose

5 A. The institutional and engineering control fund is established to
6 be administered by the director. The fund consists of monies from the
7 following sources:

8 1. Fees collected pursuant to section 49-152, subsection ~~H~~ K.

9 2. Fees collected pursuant to section 49-158, subsection ~~F~~ G.

10 3. Costs of ~~repairing or restoring~~ engineering controls that are
11 recovered pursuant to section ~~49-152, subsection I~~ 49-152.01.

12 4. Costs of ~~repairing or restoring~~ engineering controls that are
13 recovered pursuant to section 49-158, subsection ~~F~~ I.

14 5. MONIES PAID INTO THE FUND PURSUANT TO SECTION 49-152.01, SUBSECTION
15 B.

16 ~~5~~ 6. Gifts, grants and donations.

17 ~~6~~ 7. Legislative appropriations.

18 B. Monies in the institutional and engineering control fund are
19 continuously appropriated and are exempt from the provisions of section
20 35-190 relating to lapsing of appropriations. On notice from the director,
21 the state treasurer shall invest and divest monies in the fund as provided
22 by section 35-313, and monies earned from investment shall be credited to the
23 fund.

24 C. Monies in the institutional and engineering control fund shall be
25 used for the following purposes:

26 1. For all reasonable and necessary costs to implement section 49-152,
27 subsections B through ~~t~~ O and section SECTIONS 49-152.01, 49-152.02 AND
28 49-158.

29 2. For the reasonable and necessary costs to administer the fund.

30 ~~3. For the repair or restoration of engineering controls as provided~~
31 ~~by section 49-152, subsection I.~~

32 ~~4. For the repair or restoration of engineering controls as provided~~
33 ~~by section 49-158, subsection F.~~

34 Sec. 6. Section 49-701.02, Arizona Revised Statutes, is amended to
35 read:

36 49-701.02. Exemptions from definition of solid waste; soils;
37 seller's duty to disclose

38 A. The following are exempt from the definition of solid waste:

39 1. On-site excavated soils that meet, at the on-site location where
40 the soils are to be deposited, applicable predetermined remediation levels
41 adopted by the department pursuant to chapter 1, article 4 of this title and
42 applicable groundwater protection levels allowed pursuant to the leachability
43 guidance policy filed with the secretary of state on March 5, 1998, pursuant
44 to section 41-1091. If the soils exceed the predetermined residential
45 remediation levels, the following conditions shall be met:

1 (a) The owner of the property upon which the soils are to be deposited
2 shall file a written notice with the director, for placement in the
3 repository established pursuant to section 49-152, ~~subsection D~~, which
4 includes the name of the property owner, the street address and legal
5 description of the property and the ~~on-site disposition of~~ LEGAL DESCRIPTION
6 OF THE AREA ON WHICH the excavated soils which exceed predetermined
7 residential remediation levels ARE PLACED.

8 (b) If the excavated soils are removed to noncontiguous property owned
9 or operated by the same person, the owner shall notify the department at
10 least seventy-two hours prior to the intended removal.

11 2. On-site excavated soils that meet, at the on-site location where
12 the soils are to be deposited, applicable site specific remediation levels
13 allowed pursuant to chapter 1, article 4 of this title and applicable
14 groundwater protection levels allowed pursuant to the leachability guidance
15 policy filed with the secretary of state on March 5, 1998, pursuant to
16 section 41-1091, provided the following conditions are met:

17 (a) The department first approves the use of such levels for the
18 location where the soils are to be deposited. Any person who requests
19 approval of an action pursuant to this paragraph, shall reimburse the
20 department for reasonable costs to review the proposed action.

21 (b) The owner of the property upon which the soils are to be deposited
22 shall file a written notice with the director, for placement in the
23 repository established pursuant to section 49-152, ~~subsection D~~, which
24 includes the name of the property owner, the street address and legal
25 description of the property and the ~~on-site disposition of~~ LEGAL DESCRIPTION
26 OF THE AREA ON WHICH the excavated soils which exceed remediation standards
27 for residential exposure assumptions ARE PLACED.

28 3. Excavated soils THAT ARE reused at the site of excavation AND that
29 meet applicable background remediation levels allowed pursuant to chapter 1,
30 article 4 of this title.

31 4. Nonexcavated soils.

32 5. Soils THAT ARE removed off site AND that meet all predetermined
33 residential remediation standards adopted by the department pursuant to
34 chapter 1, article 4 of this title if the placement of soils at the off-site
35 location meets all the requirements of the soil remediation standards adopted
36 by the department pursuant to chapter 1, article 4 of this title.

37 B. An owner of property who has actual knowledge that the property has
38 been used for the disposal of excavated soils which do not meet predetermined
39 residential soil remediation levels or remediation standards for residential
40 exposure assumptions adopted by the department pursuant to chapter 1, article
41 4 of this title, shall, prior to transferring ownership of the property,
42 give written notice of the disposal of the excavated soils that do not meet
43 predetermined residential soil remediation levels or remediation standards
44 for residential exposure assumptions to the purchaser. Actions brought

1 pursuant to this subsection for failure of the seller to provide such written
2 notice to the purchaser shall proceed as other civil actions.

3 Sec. 7. Emergency rules; expedited process

4 Notwithstanding title 41, chapter 6, article 3, Arizona Revised
5 Statutes, the director of the department of environmental quality shall adopt
6 the rules required by sections 49-152.01 and 49-152.02, Arizona Revised
7 Statutes, as added by this act, as emergency rules by submitting the text of
8 the rules to the office of the secretary of state for publication in the
9 Arizona administrative register, and the secretary of state shall publish the
10 rules. The director shall provide for reasonable notice and at least one
11 public hearing on the proposed emergency rules. The rules become effective
12 no earlier than the thirtieth day after the last public hearing.

13 Sec. 8. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.

APPROVED BY THE GOVERNOR MAY 14, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2003.

Passed the House May 5, 2003,

by the following vote: 45 Ayes,

14 Nays, 1 Not Voting
With Emergency

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 12, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Blumenthal
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1243

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 8, 2003

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Klu Blumett Health Emergency
President of the Senate

Charmine Dillington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

8 day of May, 2003

at 11:45 o'clock A M.

Sandra Hamers
Secretary to the Governor

Approved this 14 day of

May, 2003,

at 4⁰⁰ o'clock P. M.

J. N. 15
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of May, 2003

at 1:55 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1243